

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM, and SANDRA §
McCOLLUM, individually, and STEPHANIE §
KINGREY, individually and as independent §
administrator of the Estate of LARRY GENE §
McCOLLUM, §
PLAINTIFFS §
§
v. § CIVIL ACTION NO.
§ 4:14-cv-3253
BRAD LIVINGSTON, JEFF PRINGLE, § JURY DEMAND
RICHARD CLARK, KAREN TATE, §
SANDREA SANDERS, ROBERT EASON, the §
UNIVERSITY OF TEXAS MEDICAL §
BRANCH and the TEXAS DEPARTMENT OF §
CRIMINAL JUSTICE. §
DEFENDANTS §

**PLAINTIFFS' RESPONSE TO TDCJ'S MOTION TO DESIGNATE DEAN
RIEGER AS A LATE EXPERT &
PLAINTIFFS' MOTION TO STRIKE LATE EXPERT DESIGNATIONS OF
LANNETTE LINTHICUM, PHYLLIS MCWHORTER, ROBERT WILLIAMS,
DEAN RIEGER, AND JOHN NIELSEN-GAMMON**

Exhibit 6

Lannette Linthicum - 1/13/2016

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

STEPHEN McCOLLUM and SANDRA) McCOLLUM, individually, and) STEPHANIE KINGREY,) individually and independent) administrator of the Estate) of LARRY GENE McCOLLUM) PLAINTIFFS) CIVIL ACTION NO.) 4:14-cv-3253 v.) JURY DEMAND)) LANNETTE LINTHICUM, JEFF) PRINGLE, RICHARD CLARK,) KAREN TATE, SANDREA SANDERS,) ROBERT FASON, the UNIVERSITY) OF TEXAS MEDICAL BRANCH and) the TEXAS DEPARTMENT OF) CRIMINAL JUSTICE) DEFENDANTS)) KEITH COLE, JACKIE BRANNUM,) RICHARD KING, DEAN ANTHONY) MOJICA, RAY WILSON, FRED) WALLACE, and MARVIN RAY) YATES, individually and on) behalf of those similarly) situated,) Plaintiffs,) CIVIL ACTION NO.) 4:14-cv-1698 v.)) LANNETTE LINTHICUM, in his) official capacity, ROBERTO) HERRERA, in his official) capacity, and TEXAS) DEPARTMENT OF CRIMINAL) JUSTICE,) Defendants.)

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363

Lannette Linthicum - 1/13/2016

REPORTER'S CERTIFICATION
DEPOSITION OF LANNETTE LINTHICUM
January 13, 2016
VOLUME 1

ORAL AND VIDEOTAPED DEPOSITION OF LANNETTE
produced as a witness at the instance of the
, and duly sworn, was taken in the above-styled and
cause on the 13th day of January, 2016, from 9:18 a.m.
m., before Abigail Guerra, CSR, in and for the State
reported by machine shorthand, before Honorable Keith
at the United States District Courthouse, 515 Rusk,
Texas, pursuant to the Federal Rules of Civil
and the provisions stated on the record or attached

Lannette Linthicum - 1/13/2016

1 A P P E A R A N C E S

2 FOR THE PLAINTIFF:

3 STEPHEN McCOLLUM and SANDRA McCOLLUM, individually, and
4 STEPHANIE KINGREY, individually and independent administrator
of the Estate of LARRY GENE McCOLLUM

5 Mr. Jeff Edwards
Mr. Scott Medlock
6 EDWARDS LAW
1101 East 11th Street
7 Austin, Texas 78702
Phone: (512) 623-7727

8 - and -

9 Mr. Michael Singley
10 Mr. David James
THE SINGLEY LAW FIRM, PLLC
11 4131 Spicewood Springs Road
Suite O-3
12 Austin, Texas 78759
Phone: (512) 334-4302

13

14 FOR THE DEFENDANT:

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

15 Ms. Cynthia L. Burton
16 Mr. Matthew Greer
OFFICE OF ATTORNEY GENERAL
17 300 W. 15th Street
7th Floor
18 Austin, Texas 78701
Phone: Phone: (512) 463-2080

19 - and -

20 Ms. Sharon Felfe Howell
21 TEXAS DEPARTMENT OF CRIMINAL JUSTICE - GENERAL COUNSEL
22 209 West 14th Street
Suite 500
Austin, Texas 78711
23 Phone: (512) 463-9899

24

25

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 A P P E A R A N C E S (cont'd)

2 FOR UTMB:

3 Ms. J. Lee Haney
4 Ms. Shanna Molinare
Office of Attorney General
5 300 W. 15th Street
7th Floor
6 Austin, Texas 78701
Phone: (512) 463-2080

7 - and -

8 Mr. Graig J. Alvarez
9 Ms. Kara Stauffer Philbin
FERNELIUS ALVAREZ SIMON, PLLC
10 Lyondell Basell Tower
1221 McKinney Street
11 Suite 3200
Houston, Texas 77010
12 Phone: (713) 654-1200

13 ALSO PRESENT:

14 Mr. Kevin Schaeffer, Videographer
Ms. Jennifer Osteen
15 Ms. Kamilla L. Stokes
Ms. Ashley Palermo
Ms. Brian M. Sears
16 Mr. Daniel C. Neuhoff
Ms. Heather Rhea
17 Ms. Lori K. Erwin
Ms. Glenda Adams
18 Ms. Ariel Wiley
Mr. Phillip Boyd
19 Mr. Derek Kammerlacher
Dr. Owen Murray
20 Judge Keith P. Ellison
Ms. Rebbecca Vogel

21
22
23
24
25
WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

INDEX

Appearances.....	3
LANNETTE LINTHICUM	
Examination by Mr. Edwards.....	15
Signature and Changes.....	225
Reporter's Certificate.....	227

EXHIBITS

NO.	DESCRIPTION	PAGE
1	Interoffice Communication Dated May 3, 2005 Bates Nos. McCollum 02507-08	168
2	Final Autopsy Report Bates Nos. CADDELL P0319 to 331	169
3	Administrative Directive AD-10.64 Dated August 9, 2006 Bates Nos. BAILEY 03054 to 55	178
4	Administrative Directive AD-10.64 Dated July 11, 2003 Bates Nos. BAILEY 031022 to 31	180
5	Heat Stress Policy BAILEY 03070 to 71	195
6	Email Dated June 26, 2009 Bates Nos. TDCJ013582 to 84	215

WRIGHT WATSON & ASSOCIATES1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 MS. BURTON: Your Honor, we have some
2 housekeeping issues that we would like to make for the
3 record.

4 THE COURT: All right. Please go ahead.

5 MS. BURTON: Okay. We're here this morning on
6 all the pending heat cases -- Bailey v. Livingston; Adams, et
7 al; Coldulvey, Livingston, Martone, et al; and Hinojosa, et al.

8 However, Dr. Linthicum, who is the witness this
9 morning, is here in different capacities.

10 THE COURT: Okay.

11 MS. BURTON: She is here as an expert witness in
12 the Bailey case. She is here -- it is our position that she's
13 here as a 30(b)(6) witness. That would be applicable to all
14 the cases because the questions have the scope where they
15 request information on TDCJ generally.

16 THE COURT: Okay.

17 MS. BURTON: She's also here in her individual
18 capacity.

19 THE COURT: Is 30(b)(6) representative for the
20 prison system or for the healthcare provider.

21 MS. BURTON: She is a Texas Department of
22 Criminal Justice employee.

23 THE COURT: All right.

24 MS. BURTON: And she is the director of TDCJ
25 Health Services. So her answers are with regard to this TDCJ

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 system.

2 THE COURT: Okay. Very well.

3 MS. BURTON: We also note that she's an
4 individual defendant in some of the cases and that she is being
5 also offered as a fact witness in the cases. So we are
6 requesting that the plaintiffs make it very clear in what
7 capacity they're questioning her.

8 For instance, if they're asking her 30(b)(6)
9 questions that apply to, you know, TDCJ generally, we need to
10 know that that is what those questions are about because she's
11 been designated for very specific subjects, and I do --

12 THE COURT: Have you discussed this with the
13 other side?

14 MS. BURTON: Yes. We talked to them about that
15 prior to today and similarly that we know that she's being
16 questioned as an expert. So that the record is clear --

17 THE COURT: It's not possible she can answer in
18 more than one capacity?

19 MS. BURTON: There are -- you know, certain
20 questions I suppose they would, but the problem is with the
21 30(b)(6) questions, the plaintiffs have pled in other cases
22 that it's an official position of TDCJ instead of, you know,
23 one person's answer with regard to a question. And that's what
24 we're concerned about is that's something to do with her
25 individual capacity, her individual knowledge, or her

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 individual opinion could be attributed to TDCJ as a whole. So
2 we know it's not 100 percent.

3 THE COURT: I understand the issue. Okay. Let
4 me hear the other side.

5 MS. BURTON: Okay.

6 MR. EDWARDS: Dr. Linthicum is the designated
7 policy maker for the healthcare system in TDCJ. So to the
8 extent she's designated as a 30(b)(6) witness or, frankly, as
9 an individual, her statements are likely binding on TDCJ. So I
10 think it's a bit of a nonissue. My bigger concern is I don't
11 want to be forced to ask questions like this, "Dr. Linthicum,
12 I'm only asking as a 30(b)(6) representative now," on top of
13 areas that Ms. Burton has designated multiple people as
14 30(b)(6) witnesses. In the Bailey case that's fine. That's
15 how she's done it. I'll deal with it.

16 But in the McCollum case, which is the case
17 that's set for trial in June, there have been numerous 30(b)(6)
18 witnesses taken already. It is not the plaintiff's intent for
19 this to supersede those witnesses, rather to supplement to the
20 extent necessary, but, frankly, it's as a witness.

21 Again, I don't want there to be an argument down
22 the road in June or whenever that case is ultimately tried,
23 that the 30(b)(6) witness we took in November of 2012 suddenly
24 doesn't count or something like that. And that's what I
25 envision happening, and there were numerous 30(b)(6) witnesses.

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 THE COURT: Have you had this discussion with
2 the other side?

3 MR. MEDLOCK: We have, but we have not reached
4 any sort of agreement.

5 MS. BURTON: Not that discussion. We have not
6 had that discussion. We discussed timing at a certain portion
7 of the deposition, which we would know that's about 30(b)(6),
8 and I thought that was --

9 THE COURT: I wish y'all would at least try to
10 reach a resolution on these issues before you come to court. I
11 think y'all can reach a fairer -- fairer solution than I'm
12 going to be able to impose.

13 MR. EDWARDS: For this witness, Your Honor, I
14 think your initial point that can't Dr. Linthicum speak in her
15 individual capacity and as a corporate representative is
16 particularly apt given her position with the system. I mean,
17 she is the policy maker at TDCJ.

18 THE COURT: Well, also as an expert. Give me a
19 question -- somebody give me a question that would be
20 appropriate for her to answer as an expert witness, but not as
21 a fact witness or as a 30(b)(6) representative, but not as an
22 expert.

23 MR. EDWARDS: I can't think of one.

24 THE COURT: I just don't understand the
25 dimensions of this agreement.

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 MS. BURTON: Okay. If I may approach?

2 MR. EDWARDS: Oh, sure.

3 THE COURT: Yes, you may.

4 MS. BURTON: Your Honor, the best example that
5 we have is the example that we have in the Caddell case, where
6 we filed a motion to strike because they took Mr. Eason's
7 testimony and said that it applied to all the defendants, and
8 it made -- and all the defendants had lied, and that allegation
9 was stricken by this Court. And that's what we're worried
10 about is that when they speak in their individual capacity, we
11 do not want that statement attributed to Mr. Livingston or that
12 statement attributed to Mr. Stephens.

13 Now, there is -- I did bring the list of
14 30(b)(c) -- 30(b)(6) -- pardon me -- 30(b)(6) questions so that
15 the Court would have them in front of you. And I also note
16 here that when we conferred about this with Mr. Medlock, it was
17 my understanding and Mr. Greer's understanding that an attempt
18 would be made by the plaintiffs that we at least know in this
19 part of the deposition, we are doing 30(b)(6) questions so that
20 that part, that's what they quote for TDCJ wide, but her
21 individual statements can't be quoted to attribute a
22 misstatement of fact as someone else. That's the problem.

23 MR. EDWARDS: Your Honor, that's not really a
24 problem because her misstatement of fact, if she makes one,
25 would be attributed to TDCJ, not Brad Livingston or William

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 Stephens or any other person. She is the policy maker for TDCJ
2 with regards to healthcare in the prison system. If she speaks
3 and says, "This is the way we do things," it is fair for us to
4 assume that TDCJ does things that way and that Lannette
5 Linthicum is testifying that way. If she testifies incorrectly
6 or falsely, we can deal with that. It doesn't suggest that
7 that's Brad Livingston's testimony.

8 And the quotation from the complaint, if you
9 recall, was inartfully written by us, and I believe we noted
10 that in our briefing. What it should have said is the 30(b)(6)
11 witnesses speak on behalf of TDCJ. That is the point of
12 30(b)(6) testimony. Here --

13 THE COURT: There's nothing discriminate about
14 that, is there?

15 MR. EDWARDS: I don't know.

16 MS. BURTON: Other than we had a public pleading
17 that accused individual defendants --

18 THE COURT: Well, he's acknowledged --

19 MS. BURTON: -- of improper --

20 THE COURT: I think this is one of these
21 problems that can only be worked out in -- in practical
22 application, not as a theoretical matter. So let's begin the
23 deposition, and it will -- I'm hoping that it will become
24 clear.

25 MR. EDWARDS: Your Honor, there was one other

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 Q. Have you ever read the OIG investigation report about
2 the care that Mr. James got or did not get at the Gurney Unit?

3 A. No.

4 Q. You ever read the -- okay.

5 Do you know what happened with regards to
6 Kenneth Wayne James at the Gurney Unit?

7 A. No.

8 Q. Do you know what happened with regards to Larry
9 Eugene McCollum at the Hutchins Unit?

10 A. No. I don't know the details of any of those cases.
11 I know they are heat-related deaths, hyperthermic deaths, but
12 to is sit here and testify that I reviewed those cases on an
13 individual basis and what went on, then my answer to that is
14 no, I have not.

15 Q. Do you know or have you ever reviewed any details
16 relating to Mr. Hudson's death at the Gurney Unit?

17 A. No.

18 Q. Have you reviewed or know any details about the death
19 of Mr. Adams at the -- at the Gurney Unit?

20 A. No. All of those cases, all I know is the cause of
21 death is hyperthermia.

22 Q. And --

23 A. We have -- we have staff, appropriately credentialed
24 physicians, nurses, and doctors through the Mortality Morbidity
25 Review Committee that are responsible for reviewing those

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF TEXAS
3 HOUSTON DIVISION

4 STEPHEN McCOLLUM and SANDRA)
5 McCOLLUM, individually, and)
6 STEPHANIE KINGREY,)
7 individually and independent)
8 administrator of the Estate)
9 of LARRY GENE McCOLLUM)

10 PLAINTIFFS) CIVIL ACTION NO.

11) 4:14-cv-3253

12 v.) JURY DEMAND

13 LANNETTE LINTHICUM, JEFF)
14 PRINGLE, RICHARD CLARK,)
15 KAREN TATE, SANDREA SANDERS,)
16 ROBERT FASON, the UNIVERSITY)
17 OF TEXAS MEDICAL BRANCH and)
18 the TEXAS DEPARTMENT OF)
19 CRIMINAL JUSTICE)

20 DEFENDANTS)

21 KEITH COLE, JACKIE BRANNUM,)
22 RICHARD KING, DEAN ANTHONY)
23 MOJICA, RAY WILSON, FRED)
24 WALLACE, and MARVIN RAY)
25 YATES, individually and on)
 behalf of those similarly)
 situated,)

26) CIVIL ACTION NO.
27 Plaintiffs, 4:14-cv-1698

28)
29 v.)
30 LANNETTE LINTHICUM, in his)
31 official capacity, ROBERTO)
32 HERRERA, in his official)
33 capacity, and TEXAS)
34 DEPARTMENT OF CRIMINAL)
35 JUSTICE,)

36 Defendants.)

37 **WRIGHT WATSON & ASSOCIATES**

38 1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
39 2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

REPORTER'S CERTIFICATION
DEPOSITION OF LANNETTE LINTHICUM
January 13, 2016
VOLUME 1

I, ABIGAIL L. GUERRA, Certified Shorthand Reporter,
in and for the State of Texas, hereby certify to the following:

That the witness, LANNETTE LINTHICUM, was duly sworn by the officer and that the transcript of the oral deposition is a true record of the testimony given by the witness;

I further certify that pursuant to Federal Rules of Civil Procedure (30)(e)(1)(A) and (B) as well as Rule (30)(e)(2) that the signature of the deponent:

I further certify that pursuant to FRCP Rule 30(f)(1) that the signature of the deponent:

X was requested by the deponent or a party before the completion of the deposition and that signature is to be before any notary public and returned within 30 days from date of receipt of the transcript.

If returned, the attached Changes and Signature Page contains any changes and the reasons therefore:

Lannette Linthicum - 1/13/2016

1 _____ was not requested by the deponent or a party
2 before the completion of the deposition.

3

4 That \$_____ is the deposition
5 officer's charges for preparing the original deposition
6 transcript and any copies of exhibits, charged to STEPHEN
7 McCOLLUM and SANDRA McCOLLUM, individually, and STEPHANIE
8 KINGREY, individually and independent administrator of the
9 Estate of LARRY GENE McCOLLUM, individually and on behalf of
10 those similarly situated;

11

12 That pursuant to information given to the deposition
13 officer at the time said testimony was taken, the following
14 includes all parties of record:

15 FOR THE PLAINTIFFS:

16 STEPHEN McCOLLUM and SANDRA McCOLLUM, individually, and
17 STEPHANIE KINGREY, individually and independent administrator
of the Estate of LARRY GENE McCOLLUM

18 Mr. Jeff Edwards
19 Mr. Scott Medlock
20 EDWARDS LAW
21 1101 East 11th Street
22 Austin, Texas 78702
23 Phone: (512) 623-7727

24 - and -

25 Mr. Michael Singley
26 Mr. David James
27 THE SINGLEY LAW FIRM, PLLC
28 4131 Spicewood Springs Road
29 Suite 0-3
30 Austin, Texas 78759
31 Phone: (512) 334-4302

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

1 FOR THE DEFENDANT:
2 TEXAS DEPARTMENT OF CRIMINAL JUSTICE

3 Ms. Cynthia L. Burton
4 Mr. Matthew Greer
5 OFFICE OF ATTORNEY GENERAL
6 300 W. 15th Street
7 7th Floor
8 Austin, Texas 78701
9 Phone: Phone: (512) 463-2080

10 - and -

11
12 Ms. Sharon Felfe Howell
13 TEXAS DEPARTMENT OF CRIMINAL JUSTICE - GENERAL COUNSEL
14 209 West 14th Street
15 Suite 500
16 Austin, Texas 78711
17 Phone: (512) 463-9899

18 FOR THE WITNESS:
19 UTMB

20 Ms. J. Lee Haney
21 Ms. Shanna Molinare
22 Office of Attorney General
23 300 W. 15th Street
24 7th Floor
25 Austin, Texas 78701
Phone: (512) 463-2080

- and -

26 Mr. Graig J. Alvarez
27 Ms. Kara Stauffer Philbin
28 FERNELIUS ALVAREZ SIMON, PLLC
29 Lyondell Basell Tower
30 1221 McKinney Street
31 Suite 3200
32 Houston, Texas 77010
33 Phone: (713) 654-1200

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1

Lannette Linthicum - 1/13/2016

I further certify that I am neither attorney, nor
counsel for, nor related to, nor employed by any of the parties
or attorneys to the action in which this deposition was taken;

Further, I am not a relative, nor an employee of any
attorney of record in this cause, nor am I financially or
otherwise interested in the outcome of the action.

Certified to by me this 28th day of January, 2016.



ABIGAIL GUERRA, Texas CSR 9059
Expiration Date: 12/31/17
WRIGHT WATSON & ASSOCIATES
Firm Registration No. 225
Expiration Date: 12-31-17
1250 S. Capital of Texas Highway
Building 3, Suite 400
Austin, Texas 78746
512-474-4363/512-474-8802 (fax)
www.wrightwatson.com

Job No. 160113AG

WRIGHT WATSON & ASSOCIATES

1250 South Capital of Texas Highway, Building 3, Suite 400 Austin, Texas 78746 (512) 474-4363
2d32d627-930d-45a8-92e3-94b44101e0f1